

AG Contract No.: KR05-1306TRN
ADOT ECS File No.: JPA 05-080
TRACS: H6905 01X
Section: Val Vista Road & I-10
Source Item No.: TBD

AGREEMENT

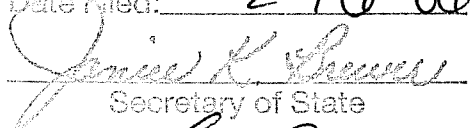
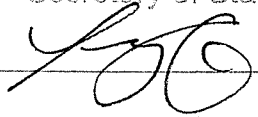
BETWEEN
THE STATE OF ARIZONA
AND
LKY DEVELOPMENT COMPANY, INC.

THIS AGREEMENT is entered into this date February 16th, 2006, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and LKY DEVELOPMENT COMPANY, INC., (the "Developer").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. LKY Development Company, Inc. is empowered to enter into this Agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Developer.
3. The LKY Company, Inc. is currently developing a project in the Casa Grande area. The primary access point to the project will be at Val Vista Road and I-10, Mile Post 188. The Developer, as part of the Developer's Project, will fund the design and construction for a "Proposed Interchange" at Val Vista Road and provide all the required preliminary design and environmental documents associated with a Change of Access as required by FHWA and ADOT.
4. Nothing herein shall be construed to impose an obligation on the State to construct or in any way fund the Proposed Interchange. The Developer has assured the State that Developer has the ability and will continue to have the ability to provide the funds necessary to process the Change of Access.

THEREFORE, in consideration of the mutual covenants expressed herein, it is further agreed as follows:

NO. 28015
Filed with the Secretary of State
Date Filed: 2-16-06

Secretary of State
By: 

II. SCOPE OF WORK

1. The Developer Shall:

a. Prepare a Change of Access Report, to State standards, referenced in paragraph (3) and in accordance to FHWA requirements, including design and other documentation required in connection with the Change of Access Report.

b. Be responsible for all costs associated with the design and environmental reports required in connection with the Change of Access Report, including but not limited to the following:

Change of Access Report
Categorical Exclusion Environmental Document
Geotechnical Memorandum
Drainage Report
Design Concept Report
Traffic Report

c. Deposit \$30,000.00 in the State account under tracs number H69050 01X, which is the estimated cost for the State's review of; (i) the environmental studies/documents required as a part of the Change of Access Report, and (ii) review of the Change of Access Report.

d. Following the final disposition of the Change of Access Report by FHWA, and a final accounting of the review costs by the State, be responsible for review costs in excess of \$30,000.00.

2. The State Shall:

a. Review all design documents, environmental documents and other documents required by the FHWA in connection with the Change of Access Report and provide timely written comments to Developer.

b. Following final disposition of the Change of Access Report by the FHWA, conduct a final accounting of the review costs and either invoice the Developer for the amount due to the State in excess of \$30,000.00 or return to Developer all unused funds.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until final disposition of the Developer's Change of Access Report by FHWA and ADOT.

2. Should Developer fail to fulfill the obligations set forth in this Agreement or withdraw its Change of Access Report for whatever reason, Developer shall be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for Developer's failure or cancellation is due to the State's failure to comply with its obligations hereunder.

3. This Agreement shall become effective upon signature of the parties hereto.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007 FAX (602) 712-7424

LKY Development Company, Inc.
5040 E. Shea Blvd, Suite 254
Scottsdale, Arizona 85254
Att : Larry K. Yount, President
Phone: (480) 951-1281

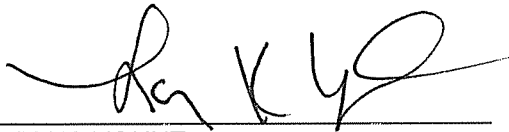
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

LKY DEVELOPMENT COMPANY, INC

STATE OF ARIZONA

Department of Transportation

By 
LARRY K. YOUNT
President

By 
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTORNEY SIGNATURE

By _____

CERTIFICATE OF RESOLUTION OF
LKY DEVELOPMENT COMPANY, INC.

The undersigned, Gail R. Yount, being the Secretary of LKY Development Company, Inc., an Arizona corporation (the "Corporation"), does hereby certify that the following resolutions were duly and regularly passed and adopted in all respects as required by law and the Bylaws of the Corporation, and that such resolutions are still in full force and effect and have not been amended, modified, revoked or rescinded:

WHEREAS, the Corporation has entered into, or is contemplating entering into, that certain Agreement between the State of Arizona and LKY Development Company, Inc. (the "Agreement") wherein the Corporation is the Developer ("Developer") and the State of Arizona is acting through its Department of Transportation (the "State"), whereby the Developer, as part of the Developer's project at Val Vista Road and 1-10, will fund the design and construction of a proposed interchange at Val Vista Road, Mile Post 188 (the "Proposed Interchange") and provide all required preliminary design and environmental documents associated with a Change of Access as required by FHWA and ADOT; and

WHEREAS, the Corporation, desires to ratify, confirm and approve the Agreement and to authorize the execution of the Agreement, any amendments thereto and all documents required or appropriate to consummate the transaction contemplated thereby;

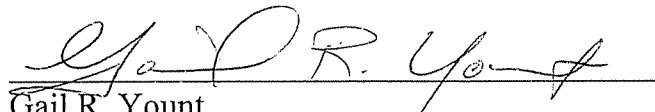
NOW, THEREFORE, BE IT RESOLVED, that the Corporation, hereby ratifies, confirms and approves the Agreement, any amendments thereto and the transaction contemplated thereby and authorizes the execution of the Agreement, any amendments thereto and all documents required or appropriate to consummate the transaction contemplated thereby;

FURTHER RESOLVED, that Larry K. Yount, President of the Corporation (the "Authorized

Representative”), should be, and he hereby is, authorized and directed, on behalf of the Corporation, to execute the Agreement, any amendments thereto and any and all documents required or appropriate to consummate the transaction contemplated thereby, each in such form and having such substance he deems appropriate in his or her sole and absolute discretion;

FURTHER RESOLVED, that all actions taken by the Authorized Representative prior to the adoption of these resolutions in connection with the Agreement, any amendments thereto or the transaction contemplated thereby, should be, and the same hereby are, ratified, confirmed and approved in all respects.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Resolution as Secretary of the Corporation on this 10th day of January, 2006.


Gail R. Yount

UNANIMOUS CONSENT OF DIRECTORS
IN LIEU OF SPECIAL MEETING OF
THE DIRECTORS OF
LKY DEVELOPMENT COMPANY, INC.

The undersigned, constituting all of the directors of LKY Development Company, Inc., an Arizona corporation (the "Corporation"), hereby consent to the following action taken without a meeting as permitted by the Bylaws of the Corporation and applicable law:

WHEREAS, the Corporation has entered into, or is contemplating entering into, that certain Agreement between the State of Arizona and LKY Development Company, Inc. (the "Agreement") wherein the Corporation is the Developer ("Developer") and the State of Arizona is acting through its Department of Transportation (the "State"), whereby the Developer, as part of the Developer's project at Val Vista Road and 1-10, will fund the design and construction of a proposed interchange at Val Vista Road, Mile Post 188 (the "Proposed Interchange") and provide all required preliminary design and environmental documents associated with a Change of Access as required by FHWA and ADOT; and

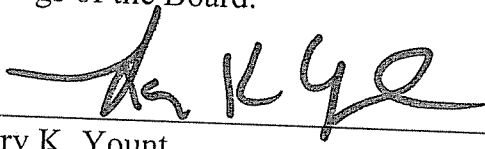
WHEREAS, the Corporation, desires to ratify, confirm and approve the Agreement and to authorize the execution of the Agreement, any amendments thereto and all documents required or appropriate to consummate the transaction contemplated thereby;

NOW, THEREFORE, BE IT RESOLVED, that the Corporation, hereby ratifies, confirms and approves the Agreement, any amendments thereto and the transaction contemplated thereby and authorizes the execution of the Agreement, any amendments thereto and all documents required or appropriate to consummate the transaction contemplated thereby;

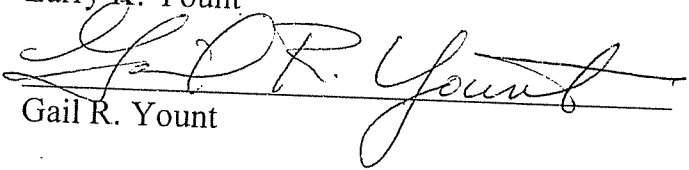
FURTHER RESOLVED, that Larry K. Yount, President of the Corporation (the "Authorized Representative"), should be, and he hereby is, authorized and directed, on behalf of the Corporation, to execute the Agreement, any amendments thereto and any and all documents required or appropriate to consummate the transaction contemplated thereby, each in such form and having such substance he deems appropriate in his or her sole and absolute discretion;

FURTHER RESOLVED, that all actions taken by the Authorized Representative prior to the adoption of these resolutions in connection with the Agreement, any amendments thereto or the transaction contemplated thereby, should be, and the same hereby are, ratified, confirmed and approved in all respects.

This consent shall be deemed effective as of the 10th day of January, 2006 and shall be filed with the minutes of the proceedings of the Board.



Larry K. Yount



Gail R. Yount

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ATTORNEY APPROVAL FORM

LKY DEVELOPMENT COMPANY, INC.

I have reviewed the above referenced agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and LKY DEVELOPMENT COMPANY, INC. ~~an agreement which has been reviewed pursuant to A.R.S. section 11-951 through 11-954,~~ and declares this agreement to be in proper form and within the powers and authority granted to LKY DEVELOPMENT COMPANY, INC. under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 10th day of January, 2006.

Perkins Cole Brown & Bain P.A.
By [Signature], ALP

Attorney

Ent	Name	Acct No	Invoice	Date	P.O. Num	Reference	Amount	Discount	Net
010	CTW Retail Partners	14300	CR010906	1/9/2006		Interchange agreemt	30,000.00	0.00	30,000.00
<i>AH CONTRACT No: KR05-1306 TRN</i> <i>ADOT FILE No: JPA 05-080</i> <i>TRACS: H6905 O/C</i> <i>PROJECT: VAL VISTA AND I-10</i> <i>CATA GRANDE, AZ</i>									
Payor: CTW Retail Partners, LLC Payee: Arizona Dept of Transportation							Check Amount 30,000.00		

Retain this statement for your records

CTW Retail Partners, LLC
8098 N. Via de Negocio
Scottsdale, AZ 85258

National Bank of Arizona
Gainey Ranch Branch
Scottsdale, AZ 85258

Check No.
003009

Date
1/9/2006

Thirty Thousand AND 00/100 Dollars

Check Amount
30,000.00


Pay to the order of:

Arizona Dept of Transportation

VOID IF NOT CASHED WITHIN 90 DAYS WITHIN DATE OF ISSUE

⑈003009⑈

⑈12205320⑈ 0050035914⑈

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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AGREEMENT:
DETERMINATION

A.G. Contract No. KR05-1306TRN (**JPA 05-080**), an Agreement between The State of Arizona and LKY Development Company, Inc. has been reviewed by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 6, 2006

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:945993
Attachment